

§ 1025.17

16 CFR Ch. II (1–1–05 Edition)

shall also be served upon each participant, if the Presiding Officer or the Commission so directs.

(b) *Service of complaint, ruling, petition for interlocutory appeal, order, decision, or subpoena.* A complaint, ruling, petition for interlocutory appeal, order, decision, or subpoena shall be served in one of the following ways:

(1) *By registered or certified mail.* A copy of the document shall be addressed to the person, partnership, corporation or unincorporated association to be served at his/her/its residence or principal office or place of business and sent by registered or certified mail; or

(2) *By delivery to an individual.* A copy of the document may be delivered to the person to be served; or to a member of the partnership to be served; or to the president, secretary, or other executive officer, or a director of the corporation or unincorporated association to be served; or to an agent authorized by appointment or by law to receive service; or

(3) *By delivery to an address.* If the document cannot be served in person or by mail as provided in paragraph (b)(1) or (b)(2) of this section, a copy of the document may be left at the principal office or place of business of the person, partnership, corporation, unincorporated association, or authorized agent with an officer or a managing or general agent; or it may be left with a person of suitable age and discretion residing therein, at the residence of the person or of a member of the partnership or of an executive officer, director, or agent of the corporation or unincorporated association to be served; or

(4) *By publication in the FEDERAL REGISTER.* A respondent that cannot be served by any of the methods already described in this section may be served by publication in the FEDERAL REGISTER and such other notice as may be directed by the Presiding Officer or the Commission, where a complaint has issued in a class action pursuant to § 1025.18.

(c) *Service of other documents.* Except as otherwise provided in paragraph (b) of this section, when service of a document starts the running of a prescribed period of time for the submission of a responsive document or the occurrence of an event, the document may be

served as provided in paragraph (b) of this section or by ordinary first-class mail, properly addressed, postage prepaid.

(d) *Service on a representative.* When a party has appeared by an attorney or other representative, service upon that attorney or other representative shall constitute service upon the party.

(e) *Certificate of service.* The original of every document filed with the Commission and required to be served upon all parties to any proceedings, as well as participants if so directed by the Presiding Officer, shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party and participant to the proceedings. Certificates of service may be in substantially the following form:

I hereby certify that I have served the attached document upon all parties and participants of record in these proceedings by mailing, postage prepaid, (or by delivering in person) a copy to each on

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(Signature)

For

(f) *Date of service.* The date of service of a document shall be the date on which the document is deposited with the United States Postal Service, postage prepaid, or is delivered in person.

§ 1025.17 Intervention.

(a) *Participation as an intervenor.* Any person who desires to participate as a party in any proceedings subject to these rules shall file a written petition for leave to intervene with the Secretary and shall serve a copy of the petition on each party.

(1) A petition shall ordinarily be filed not later than the convening of the first prehearing conference. A petition filed after that time will not be granted unless the Presiding Officer determines that the petitioner has made a substantial showing of good cause for failure to file on time.

(2) A petition shall:

(i) Identify the specific aspect or aspects of the proceedings as to which the petitioner wishes to intervene,

(ii) Set forth the interest of the petitioner in the proceedings,

(iii) State how the petitioner's interest may be affected by the results of the proceedings, and

(iv) State any other reasons why the petitioner should be permitted to intervene as a party, with particular reference to the factors set forth in paragraph (d) of this section. Any petition relating only to matters outside the jurisdiction of the Commission shall be denied.

(3) Any person whose petition for leave to intervene is granted by the Presiding Officer shall be known as an "intervenor" and as such shall have the full range of litigating rights afforded to any other party.

(b) *Participation by a person not an intervenor.* Any person who desires to participate in the proceedings as a non-party shall file with the Secretary a request to participate in the proceedings and shall serve a copy of such request on each party to the proceedings.

(1) A request shall ordinarily be filed not later than the commencement of the hearing. A petition filed after that time will not be granted unless the Presiding Officer determines that the person making the request has made a substantial showing of good cause for failure to file on time.

(2) A request shall set forth the nature and extent of the person's alleged interest in the proceedings. Any request relating only to matters outside the jurisdiction of the Commission shall be denied.

(3) Any person who files a request to participate in the proceedings as a non-party and whose request is granted by the Presiding Officer shall be known as a "Participant" and shall have the right to participate in the proceedings to the extent of making a written or oral statement of position, filing proposed findings of fact, conclusions of law and a post hearing brief with the Presiding Officer, and filing an appellate brief before the Commission if an appeal is taken by a party or review is ordered by the Commission in accordance with § 1025.53 or § 1025.54, as applicable, of these rules.

(c) *Response to petition to intervene.* Any party may file a response to a petition for leave to intervene after the petition is filed with the Secretary, with particular reference to the factors

set forth in paragraph (d) of this section.

(d) *Ruling by Presiding Officer on petition.* In ruling on a petition for leave to intervene, the Presiding Officer shall consider, in addition to all other relevant matters, the following factors:

(1) The nature of the petitioner's interest, under the applicable statute governing the proceedings, to be made a party to the proceedings;

(2) The nature and extent of the petitioner's interest in protecting himself/herself/itself or the public against unreasonable risks of injury associated with consumer products;

(3) The nature and extent of the petitioner's property, financial or other substantial interest in the proceedings;

(4) Whether the petitioner would be aggrieved by any final order which may be entered in the proceedings;

(5) The extent to which the petitioner's intervention may reasonably be expected to assist in developing a sound record;

(6) The extent to which the petitioner's interest will be represented by existing parties;

(7) The extent to which the petitioner's intervention may broaden the issues or delay the proceedings; and

(8) The extent to which the petitioner's interest can be protected by other available means.

If the Presiding Officer determines that a petitioner has failed to make a sufficient showing to be allowed to intervene as a party, the Presiding Officer shall view such petition to intervene as if it had been timely filed as a request to participate in the proceedings as a participant pursuant to paragraph (b) of this section.

(e) *Ruling by Presiding Officer on request.* In ruling on a request to participate as a participant, the Presiding Officer, in the exercise of his/her discretion, shall be mindful of the Commission's mandate under its enabling legislation (see 15 U.S.C. 2051 *et seq.*) and its affirmative desire to afford interested persons, including consumers and consumer organizations, as well as governmental entities, an opportunity to participate in the agency's regulatory processes, including adjudicative proceedings. The Presiding Officer shall

consider, in addition to all other relevant matters, the following factors:

(1) The nature and extent of the person's alleged interest in the proceedings;

(2) The possible effect of any final order which may be entered in the proceedings on the person's interest; and

(3) The extent to which the person's participation can be expected to assist the Presiding Officer and the Commission in rendering a fair and equitable resolution of all matters in controversy in the proceedings.

The Presiding Officer may deny a request to participate if he/she determines that the person's participation cannot reasonably be expected to assist the Presiding Officer or the Commission in rendering a fair and equitable resolution of matters in controversy in the proceedings or if he/she determines that the person's participation would unduly broaden the issues in controversy or unduly delay the proceedings.

(f) *Designation of single representative.* If the Presiding Officer determines that a petitioner pursuant to paragraph (a) of this section or a person requesting to participate pursuant to paragraph (b) of this section is a member of a class of prospective intervenors or participants, as applicable, who share an identity of interest, the Presiding Officer may limit such intervention or participation, as applicable, through designation of a single representative by the prospective intervenors or participants, as applicable, or, if they are unable to agree, by designation of the Presiding Officer.

**§ 1025.18 Class actions.**

(a) *Prerequisites to a class action.* One or more members of a class of respondents may be proceeded against as representative parties on behalf of all respondents if:

(1) The class is so numerous or geographically dispersed that joinder of all members is impracticable;

(2) There are questions of fact or issues of law common to the class;

(3) The defenses of the representative parties are typical of the defenses of the class; and

(4) The representative parties will fairly and adequately protect the interests of the class.

(b) *Composition of class.* A class may be composed of:

(1) Manufacturers, distributors, or retailers, or a combination of them, of products which allegedly have the same defect, or

(2) Manufacturers, distributors, or retailers, or a combination of them, of products which allegedly fail to conform to an applicable standard, regulation, or consumer product safety rule, or

(3) Manufacturers, distributors, or retailers, or a combination of them, who have themselves allegedly failed to conform to an applicable standard, regulation, or consumer product safety rule.

When appropriate, a class may be divided into subclasses and each subclass shall be treated as a class.

(c) *Notice of commencement.* A complaint issued under this section shall identify the class, the named respondents considered to be representative of the class, and the alleged defect or non-conformity common to the products manufactured, imported, distributed or sold by the members of the class. The complaint shall be served upon the parties in accordance with § 1025.16.

(d) *Proper class action determination.* Upon motion of Complaint Counsel and as soon as practicable after the commencement of any proceedings brought as a class action, the Presiding Officer shall determine by order whether the action is a proper class action. It is a proper class action if the prerequisites of paragraph (a) of this section are met and if the Presiding Officer finds that:

(1) The prosecution of separate actions against individual members of the respondent class might result in (i) inconsistent or varying determinations with respect to individual members of the class which might produce incompatible or conflicting results, or (ii) determinations with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members who are not parties to the proceedings or would substantially impair or impede the ability of the absent members to protect their interests; or